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REPORT

OF THE

ATTORNEY-GENERAL

TO THE

GOVERNOR,

FOR THE YEARS 1879 AND 1880.

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REPORT OF ATTORNEY GENERAL.

ATTORNEY GENERAL'S OFFICE,
LINCOLN, NEB., Dec. 31, 1880.

To His Excellency, Albinus Nance, Governor of the State of Nebraska:

SIR:—I herewith submit the following report of the business transactions of this office, for the years 1879 and 1880.

Schedule "A" hereto annexed, contains a list of cases in which the state was interested, and which have been argued and disposed of by the supreme court.

Schedule "B" contains a list of cases now pending in the supreme court, and stand for hearing.

Schedule "C" contains a list of cases in the circuit court of the United States, and in which the state was a party and interested.

Schedule "D" contains a list of cases in the district courts of the state, in which the state was or is interested as a party.

There is one case in the above list which it is proper that I should state more fully its history, and that is the case of the State v. I. P. Olive *et al.*

At the convening of the legislature two years ago, this case was creating universal comment throughout the United States, and greatly detrimental to this state.

It was alleged that I. P. Olive and a gang of men under his control, on the night of the 10th of December, A.D. 1878, within the county of Custer, in the northwestern part of the state, had brutally murdered two men, to-wit, Luther Mitchell and Ami Ketchum.

To this it was charged that Olive was immensely wealthy, a desperado from the state of Texas, and had such control over the citizens of Custer County by means of his revolver and money, that he never could be convicted.

Added to this the fact of the enormous increase of crime in the northwestern portion of the state, the legislature deemed it proper and did appropriate $10,000 for the purpose of paying the expenses of and carrying on the prosecution of desperate criminal cases, and placed the same under the control and direction of the governor.

In pursuance of this law andowing to the fact that the said Olive was making extraordinary exertions to evade the punishment which the law had imposed upon offenders of that kind, the Hons. J. M. Thurston and C. W. McNamar were selected to assist the district attorney of the fifth judicial district to prosecute the case.

At the time of the commission of the offense above named, Custer County was so situated that one-half of its territory was in the sixth judicial district and the other half in the fifth judicial district, and no district court had been or could have been held in said county, and owing to the complete control which the said Olive had and exercised over the inhabitants of said county, it was considered that a trial therein would be a certain discharge of the defendants without regard to law or evidence.

The county was sparsely settled—a great many had come with Olive up from Texas—and the majority of the officials of the county were under his influence.

The sheriff (one O'Brien), was and is an abject tool of Olive's.

The county judge (one Eugene Boblits), came and went at Olive's command, and on the night of the murder he was at Olive's ranch and saw the men making preparations and start from there to the place of the murder. He remained there until they came back and Olive with them; he heard them talking of the transaction, and claimed that he saw Olive distributing whisky and money to the men. He remained there the remainder of the night, and in the morning was ready to do Olive's bidding, and from that time until the present he has been an active partizan in the interests of Olive.

On the 25th day of February, 1875, the legislature of this state passed an act entitled "An act to authorize the judges of the district courts to designate the county where an indictment may be found and the person tried for any felonious offense, charged to have been committed in any unorganized county or in any county where no district courts are held."

This law was re-enacted in 1879, and as the county of Custer was

in two judicial districts no courts had been or could have been held therein, it was therefore considered by the district court that the case came under the above law, and that the case could be tried in any county within the district, and as Adams county was the most populous county in the district and the most likely to be free from any prejudice, it was selected by the court as the county where said cause should be tried.

Indictments were found against Olive and those associated with him for the crime of murder in the first degree, and at the March term, A.D. 1880, I. P. Olive and Frederick Fisher were placed upon trial.

The prosecution was represented by the Hons. J. D. Scofield, District Attorney, J. M. Thurston, C. W. McNamar and myself; and for the defense, appeared the Hons. B. I. Hinman, W. Norvill, A. H. Conner, F. G. Hamer, J. L. Warrington, James Laird, B. F. Smith and John Carrigan.

The trial lasted several days, and was, perhaps, the most exciting one ever had in the state, and I believe that I may safely say that the evidence was overwhelming, clear and conclusive, and that whatever may hereafter be done with the case, there never will be any doubt resting in the minds of any one as to Olive's guilt of one of the most foul murders ever committed, but there were two persons on that jury who would not find a verdict of murder in the first degree, and the result was—a compromise verdict of murder in the second degree.

Upon this verdict, the defendants were sentenced to serve in the penitentiary for life.

The case was taken to the supreme court, and at the July term, A.D. 1880, it was heard, and on the.....day of.....1880 the opinion of the court was filed, reversing the judgment of the court below, and remanding the prisoners to the authorities of Custer county, the court holding that the defendants could not be tried in any other county than Custer.

To this part of the opinion Chief Justice Maxwell dissented.

The defendants were taken to Custer county by the sheriff O'Brien, who took them before the same county judge, Boblits, and it is needless to say that they were by him promptly discharged.

So ends the Olive trial—for a trial in Custer county with its

present organization of officers and influences, would be a mockery of justice; it would be a trial of Olive by a jury of his own selection. But the time will come no doubt, when with new men and new influences in Custer county, justice will be done; but until that time Olive will be at large, with the blood of innocent men upon his hands, and the charred flesh and bones of Mitchell and Ketchum will cry for justice, and no law can punish the offenders.

On the trial of the cause the district attorney was greatly assisted by the services of the Hons. J. M. Thurston and C. W. McNamar, and for which they have received no compensation.

On the first day of October, 1880, under the direction of the board of education land funds, I made application to the Department of the Interior at Washington, D. C., to allow the state to select indemnity for lands disposed of by the government in sections 16 and 36, within the limits of the Pawnee and Otoe Indian reservations, and in answer to said application the following reply was received, to-wit:

"DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C. Dec. 9, 1880.

"*The Governor of Nebraska, Lincoln, Nebraska:*

"SIR:—I am in receipt of a communication from C. J. Dilworth, Attorney General of your state, dated October 1st last, in which he makes application on behalf of the state, that it be allowed to select indemnity for lands disposed of by the government in sections 16 and 36, within the limits of the Pawnee and Otoe Indian reservation, under the provisions of the act of congress of April 10, 1875, and August 15, 1876, respectively, lists of which are transmitted, embracing tracts of an aggregate area of twenty-two thousand three hundred and seventy-two and forty-nine hundredths (22,372.49) acres.

"Said application is based on the acts of congress of May 30, 1854, April 19, 1864, and March 30, 1854, and on the opinion of the U. S. Attorney General (dated January 21, 1880), in the matter of the application of the state of Kansas for indemnity for lands lost in sections 16 and 36, within the limits of the several Indian reservations within its border, and which have been disposed of by the government.

"In reply, I would state that upon an examination of the character of the Indian title to the lands referred to, as well as to the acts of congress under which the same were disposed of, I am satisfied that the state of Nebraska is entitled to indemnity for the lands disposed of as per list transmitted. You are hereby authorized to select indemnity for the lands so disposed of under the provisions of the seventh section of the act of congress, approved April 19, 1864, which requires the selections to be made in legal sub-divisions of *not less than one-quarter sections*, and as contiguous as may be to the lands lost.

"In case *double* minimum lands are selected for *minimum* lands disposed of, one acre of the former must be taken in lieu of *two* acres of the latter.

"It is important and necessary, that the selecting agent of the state should make such careful and thorough preliminary examination, as will enable him to select lands to which there may exist no valid claims by pre-emption or otherwise, and thus avoid the embarrassments and delays consequent upon such conflicts.

"Very respectfully,

"J. A. WILLIAMSON,
"Commissioner."

This gives to the state 22,372.49 acres of school lands in addition to the amounts already on hand.

At the commencement of my term office, my predecessor placed in my hands the following mortgages, given by parties to secure loans, obtained from the permanent school fund:

1. Royal Buck and wife, for $1,200. This claim has been collected and paid into the state treasury.

2. William Fulton and wife, $2,500. On this claim a judgment has been obtained against the defendants. The lands mortgaged sold and bid in by the state for the sum of $1,600, with personal judgment against the defendant Fulton for the remainder.

3. O. P. Mason and wife, $2,000. On this case the debt has been reduced to $1,400, and the interest has been paid up to January 1, 1881, allof which has been paid into the state treasury. This debt is well secured and is drawing ten per cent interest, and can be collected at any time.

4. N. C. Brock and wife, $2,000. This debt has not been paid

or any part thereof, and suit has been commenced to foreclose the same.

5. Wm. F. Chapin and wife, $1,000. In this case the mortgage has been foreclosed in the U. S. Court, and the money will be collected in due course of law.

6. A. P. Cogswell and wife, $1,250. In this case the judgment has been obtained of foreclosure, and money made in due course of law.

7. S. D. Beals and wife, $1,150. In this case the interest has been collected up to January 1, 1881, and paid into the state treasury since the said treasurer has closed up his report.

8. John Gillespie and wife, $4,000. In this case judgment of foreclosure was obtained in 18[illegible]9, and when I came into office I found that the property, amounting in value to several thousand dollars, had been sold to outside parties for less than $200. This sale I had set aside and the property resold, and the property known as the Gillispie property in Lincoln, was bid in by the state for the sum of $2,800, and sale confirmed and made, and the remainder of the property mortgaged sold to W. W Wilson for $600.

9. N. W. Liming and wife, $200. In this case the money has been made and paid into the state treasury.

10. Geo. Ballentine and wife, original debt $4,000. In this case the debt has not been paid, and suit of foreclosure has been commenced.

11. Lyman Frost and wife, $5,000. The money has not been collected in this case, and suit of foreclosure pending.

13. J. M. Young and wife, $5,000. In this case the debt has not been paid, and suit of foreclosure commenced.

14. John Cadman and wife, $6,000. In this case nothing has been made, and suit of foreclosure commenced.

SCHEDULE "A."

LIST OF STATE CASES DISPOSED OF BY THE SUPREME COURT.

No. 1.

Wm. H. Longfellow v. The State of Nebraska.	Reversed.

No. 2.

The State of Nebraska *ex rel.* McLean v. F. W. Liedtke, auditor.	Writ of Mandamus allowed to pay claim of University out of the general fund.

No. 3.

The State of Nebraska *ex rel.* Pearman v. F. W. Liedtke, auditor.	Mandamus refused to pay claims.

No. 4.

The State of Nebraska *ex rel.* Marlay v. F. W. Liedtke, auditor.	Motion for writ of Mandamus to pay claims—refused.

No. 5.

Rowen Irwin, et al. v. The State of Nebraska.	Reversed.

No. 6.

Michael McCarthy
v.
The State of Nebraska.
} Affirmed.

No. 7.

Andrew J. McCune
v.
The State of Nebraska.
} Reversed.

No. 8.

John Monroe
v.
The State of Nebraska.
} Affirmed.

No. 9.

William Haslip
v.
The State of Nebraska.
} Reversed.

No. 10.

Charles Erickson
v.
The State of Nebraska.
} Affirmed.

No. 11.

I. P. Olive et al.
v.
The State of Nebraska.
} Reversed and Remanded to Custer County.

No. 12.

Edward Priest et al.
v.
The State of Nebraska.
} Reversed.

No. 13.

The State of Nebraska,
ex rel. Atty.-Gen'l.,
v.
F. W. Liedtke, auditor.

} Mandamus awarded to pay over fees collected as auditor.

No. 14.

Wm. G. Greene et al.
v.
The State of Nebraska.

} Proceedings dismissed.

No. 15.

The State of Nebraska
ex rel. A. S. Baldwin
v.
J. H. MacColl.

} Mandamus denied.

No. 16.

Henry A. Schlencker
v.
The State of Nebraska.

} Reversed.

No. 17.

Wm. J. McElvoy
v.
The State of Nebraska.

} Reversed.

No. 18.

Isaac Albertson et al.
v.
The State of Nebraska.

} Reversed.

No. 19.

Joseph Brown
v.
The State of Nebraska.

} Affirmed.

No. 20.

John Fiske
v.
The State of Nebraska.

Reversed.

No. 21.

George Cottrell
v.
The State of Nebraska.

Affirmed.

No. 22.

The State of Nebraska
ex rel. Louis Cropsey
v.
F. W. Liedtke, auditor.

Mandamus allowed.

No. 23.

Ex parte John Moore
v.
Joseph S. Hoagland.

Habeas Corpus.
Denied.

No. 24.

George J. St. Louis
v.
The State of Nebraska.

Affirmed.

No. 25.

James R. Candy
v.
The State of Nebraska.

Affirmed.

No. 26.

John Kountze
v.
The State of Nebraska.

Dismissed.

SCHEDULE "B."

LIST OF STATE CASES NOW PENDING IN THE SUPREME COURT.

No. 1.

Joshua Slover
v.
The State of Nebraska.

Rape.
Error to Fillmore Co.

No. 2.

Maurice Fitzgerald
v.
The State of Nebraska.

Manslaughter.
Error to Cass Co.

No. 3.

Leroy Kesterson
v.
The State of Nebraska.

Robbery.
Error to Otoe Co.

No. 4.

Horace B. S. Smith et al.
v.
The State of Nebraska.

Recognizance.
Error to Douglas Co.

No. 5.

Edward Engster
v.
The State of Nebraska.

Error to Franklin Co.

No. 6.

William B. Baldwin
v.
The State of Nebraska.

Murder.
Error to Adams Co.

No. 7.

The State of Nebraska *ex rel.* Atty.-Gen'l. v. The Board of County Commissioners of Richardson Co.	For extending tax list in Richardson Co.

SCHEDULE "C."

LIST OF STATE CASES IN U. S. COURTS.

No. 1.

Hillsdale College v. W. F. Chapin.	In this case there was a judgment taken against W. F. Chapin upon a decree of foreclosure with a stay of an order of sale for one year upon his paying the interest on the same.

No. 2.

Hoagland v. John Gillespie & The State.	This was an action of ejectment against John Gillespie to recover upon a tax title what is generally known as the Gillespie property in the city of Lincoln. The State having purchased the interest of Gillespie, was substituted as defendant, and upon the trial verdict was rendered for the State.

SCHEDULE "D."

LIST OF CASES PENDING IN THE DISTRICT COURT OF THE STATE.

No. 1.

The State
v.
F. W. Liedtke, et al.

This is a suit now pending in the district court of York County against F. W. Liedtke, late auditor, and his bondsmen (one hundred and twenty-three in all), to recover the amount of money which the said auditor received as fees and failed to pay over to the treasury.

No. 2.

The State
v.
George W. Ballentine.

This is an action pending in the district court of Lancaster County to foreclose a mortgage given by George W. Ballentine to secure the amount of $4,000 —borrowed by him from the permanent school fund.

No. 3.

The State
v.
John Cadman et al.

This is an action pending in the district court of Lancaster County to foreclose a mortgage given by John Cadman and wife to the State for the permanent school fund.

No. 4.

The State
v.
Nelson C. Brock.

This is an action in the district court of Lancaster County to foreclose a mortgage given by Brock to the State on the permanent school fund.

No. 5.

The State
v.
Lyman Frost.

This is an action in the district court of Lancaster County to foreclose a mortgage given by Lyman Frost and wife to secure a loan of the permanent school fund.

No. 6.

The State
v.
J. M. Young et al.

This is an action to foreclose a mortgage given by J. M. Young and wife to secure a loan of the school money.

No. 7.

The State
v.
John Gillespie.

This was an old judgment which had been obtained against John Gillespie in 1873, and real-estate to the value of several thousand dollars has been bid off at the nominal value of less than one hundred and fifty dollars and sold to outside parties. This sale I had set aside, and at another sale it was purchased by the State, and is now owned by the State.

All of which is respectfully submitted.

C. J. DILWORTH,
Attorney General.